IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2646 OF 2005

IN

SUIT NO.307 OF 1980

M/s Jhalani Tools (India) Pvt.Ltd. ...Plaintiffs

v/s

Behrmann A. alias Albert Behrmann and others ...Defendants

Mr Narayan Sahu i/b M/s S.K. Srivastava and Co. for Plaintiffs.

Mr Rahul Narichania i/b M/s Motiwala and Co. for Defendant No.3 in support.

CORAM : D.K. DESHMUKH J.

DATE : 4TH APRIL 2007.

P.C. :-

1. This notice of motion has been taken out by the defendant No.3 for rejection of the plaint against defendant No.3 under Order VII Rule 11-B of the C.P.C. According to the defendant No.3, as per the averments made in the plaint itself, the defendant No.3 accepted the goods to which the suit relates as agents of their principals viz. defendant Nos.1 and 2. Even the bill of lading which has been issued by the defendant No.3, which is relied on by the plaintiffs, also describes defendant No.3 as agents of the defendant Nos.1 and 2. The learned counsel appearing for plaintiffs invited my attention to the averments in paragraphs, 4, 8, 9 and 10 of the plaint to claim that it is the clear case of the plaintiffs in the plaint that the consignment was entrusted to the defendant No.3 as agents of the defendant Nos.1 and 2 and therefore, in view of the provisions of section 213 of the Contract Act, no liability can be fastened on the defendant No.3 and therefore, the plaint in so far as it claims decree against defendant No.3 is liable to be rejected. The learned counsel appearing for defendants, on the other hand, submits that in paragraph 4 of the plaint, the plaintiffs have said that the defendant No.3 was purporting to deal in their own name as principals with

the plaintiffs and therefore, the plaintiffs will have to lead evidence to show that the defendant No.3 issued the bill of lading as principals. He also referred to the order of the Appeal Court dated 9th October 2001 in Appeal (Lodging) No.869 of 2001. So far as the order of the Appeal Court is concerned, in my opinion, that order is not relevant for deciding this notice of motion. By that order, the Appeal Court has set aside the order passed by the learned Single Judge disposing of the suit on the basis of compromise proposal and has directed the learned Single Judge to decide the suit on merits after permitting the plaintiffs to lead evidence. In so far as the present motion is concerned, following averments in paragraphs 4, 8, 9 and 10 of the plaint are relevant.

They read as under :-

> "4. ..... The 3rd Defendants represent and / or hold themselves out as general agents and / or shipping agents for various foreign parties and as such carry on the business of such agents for those foreign parties in India. At all material times to the suit Defendant No.3 have represented or held themselves out as such agents for and / or on behalf of the defendant No.1 and / or 2. In any event Defendant No.3 have purported to deal with in their own name as principals with

the plaintiffs as more particularly set out herein. .....

8. ..... The 3rd Defendants were acting as such agents and held themselves out as even authorised to issue the required Bill of Lading. In these circumstances the plaintiffs approached the 3rd Defendants and requested the 3rd Defendants to carry the aforesaid goods on board the said vessel from the port of Bombay to the port of Lattakia. .....

9. ..... The Plaintiffs say that on receipt of the aforesaid two consignments on board the said vessel the Defendants No.3 duly issued two Bills of Lading bearing Nos.17/LAT dated 31-8-1978 for 75 wooden cases weighing 5392 kgs. gross and 4519 kgs. net and another Bill of Lading No.18/LAT dated 31-8-1978 for 110 wooden cases weighing 6467 kgs. gross and 5110 kgs. net. .....

10. .....The said vessel was represented to be owned by Defendant No.1 and taken on hire / charter by Defendant No.2 for whom Defendant No.3 were acting as such general

agents. ....."

. Perusal of the above quoted portion from paragraph 4 shows that in paragraph 4, the plaintiffs are describing the general activities of the defendant No.3 and saying that the defendant No.3 has purported to deal in their own name as principals with the plaintiffs as more particularly set out therein. The averments regarding actual transactions are to be found in paragraphs 8, 9 and 10. Perusal of the portions of paragraphs 8, 9 and 10 quoted above show that the plaintiffs contend that the defendant No.3 were acting as agents and represented that as agents, they are authorised to issue required bill of lading. Then in paragraph 9 it is claimed that the bill of lading was issued by the defendant No.3. At this stage, if one looks at the bill of lading, which is produced by the plaintiffs themselves, it is clear that it is signed by the defendant No.3 as agents of defendant Nos.1 and 2. In paragraph 10, the plaintiffs have clearly stated that it was represented to them that the vessel which was owned by the defendant No.1 was chartered by the defendant No.2 and the defendant No.3 were acting as general agents of defendant Nos.1 and 2. Therefore, the clear case of the plaintiffs in the plaint is that the bill of lading was issued by the defendant No.3 as agents of the defendant Nos.1 and 2 and this is in

consonance with the documents produced by the plaintiffs themselves. So far as the one averment made in paragraph 4 is concerned, it does not deal with the actual dealings with the parties, it is of general nature. So far as the specific dealings with the parties are concerned, the averments made in paragraphs 8, 9 and 10 which are quoted above clearly show that while dealing with the plaintiffs, the defendant No.3 have acted as agents of the defendant Nos.1 and 2. So far as the law is concerned, it is clear that in view of the provisions of section 213 of the Contract Act, a person who is acting as agent of the disclosed principal, cannot be held liable. The leaned counsel appearing for plaintiffs also did not dispute that if it is apparent from the plaint that the defendant No.3 were acting as agent of a disclosed principal, then the plaint is liable to be rejected in view of the provisions of section 213 of the Contract Act. The leaned counsel appearing for plaintiffs relied on my order dated 23rd October 2001 passed in notice of motion No.1996 of 2000 in suit No.6555 of 1999 (TTK Biomed Ltd. v/s M/s Avia Exports and ors.) in support of his proposition that liability cannot be fastened on an agent of the disclosed principal. Taking overall view of the matter therefore, in my opinion, considering the averment made in the plaint, the claim of the plaintiffs cannot be granted against the defendant No.3 and

therefore, the suit is liable to be rejected as against defendant No.3 only. It is accordingly so ordered.

Notice of motion is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.